

CANAL ZONE PENAL CODE, ETC.

JANUARY 21, 1921.—Referred to the House Calendar and ordered to be printed.

Mr. JONES of Pennsylvania, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 13649.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 13649), having considered the same, report thereon with amendments and as so amended recommend that it pass.

Amend the bill as follows:

Page 3, line 1, strike out the word "Penale" and insert the word "Penal."

Page 3, line 3, strike out the word "petty" and insert the word "petit."

Page 3, line 14, strike out the word "the" and insert the letter "a."

Page 3, line 15, strike out the word "seventeen" and insert the word "seventeenth."

Page 3, line 20, strike out the words "penal law" and insert the words "Penal Code."

Page 4, line 7, strike out the words "so as."

Page 4, line 13, after the word "imprisonment" strike out the comma and insert a period, and strike out the balance of lines 13 and 14.

WAR DEPARTMENT,
Washington, April 9, 1920.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

SIR: I have the honor to transmit herewith a draft of a bill to amend the Penal Code of the Canal Zone and the Navigation Rules of the Panama Canal. This bill provides for the amendment of the Penal Code of the Canal Zone in respect to six sections, namely, sections 288, 342, 343, 344, 368, and 461, as well as paragraph 2 of the Navigation Rules of the Panama Canal.

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The inclosed bill has been submitted by Col. Chester Harding, governor of the Panama Canal, with the statement that the reasons for the proposed changes are explained in detail in a letter addressed to him under date of January 30, 1920, by Judge Feuille, special attorney for the Panama Canal, a copy of which letter is also forwarded herewith. It will be noted from this letter that the district attorney of the Canal Zone is also of the opinion that this legislation is needed. For the purpose of convenience I attach hereto a statement showing in parallel columns the present and proposed wording of the matter which it is proposed to amend.

As above indicated, the reasons for desiring the enactment of this legislation are fully set forth in the report of Special Attorney Feuille and meet with the approval of Gov. Harding. I therefore recommend that the desired legislation be enacted into law at the earliest practicable date.

Very respectfully,

NEWTON D. BAKER,
Secretary of War.

ANCON, CANAL ZONE, January 30, 1920.

Col. CHESTER HARDING, United States Army,
Governor of the Panama Canal, Balboa Heights, Canal Zone.

SIR: I am inclosing herewith a bill to amend the Penal Code of the Canal Zone and the Navigation Rules of the Panama Canal. If the same meets with your approval, I recommend that the bill be forwarded to the authorities in Washington, with the request that it be submitted to Congress for enactment.

The first paragraph of the bill provides for the amendment of section 288 of act No. 14 of the Isthmian Canal Commission, enacted September 3, 1904, and known as the Penal Code of the Canal Zone. In order that the effect of the amendment may appear, I quote section 288 of the Penal Code, unamended:

"SEC. 288. A person who engages in, instigates, aids, encourages, or does any act to further a contention or a fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, or who engages in a public or private sparring exhibition, with or without gloves, within the Canal Zone, who sends or publishes a challenge or acceptance of a challenge for such a contention, exhibition, or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition, or fight, shall be guilty of a felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars and be imprisoned in the penitentiary not less than one year nor more than three years."

Section 288 of the Code prohibits any kind of sparring, however inoffensive it may be. The amendment is submitted under your instructions, so that if it becomes a law boxing will be permitted under the auspices of the clubhouses and playgrounds and in the Army and Navy stations in the Canal Zone.

The proposed amendment is an adaptation of sections 320 and 321 of the act of Congress entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, being chapter 321, Thirty-fifth Statutes at Large, page 1088. The said sections are applicable in the Territories of the United States and the District of Columbia.

Paragraph 2 of the bill contains amendments to sections 342 and 368 of the Penal Code of the Canal Zone, as amended by the President's order of March 13, 1907. I have placed the amendment to these two sections together, because they are both included in the Executive order of March 13, 1907.

The proposed amendment to section 342 restores the section to its original form prior to being amended by the above-mentioned Executive order, with the exception that the value of the property taken is increased from \$25 to \$50, in order to constitute grand larceny.

The Executive order of March 13, 1907, added a clause to the section making it grand larceny to take property of the Government, whatsoever its value may be. The effect of this was to cause the courts to designate the offense by some other title, in order to avoid sending the accused to the penitentiary when the Government property taken was of small value. I know no reason why a discrimination should be made between public property and private property in defining the offense of grand larceny.

In fixing the value of property taken at \$50 or more to constitute grand larceny I have followed the legislation of a number of States. I am of the opinion that the

taking of property under the value of \$50 should not be classified as a felony, as the punishment for a felony carries not only the principal penalty, but the very serious subsidiary punishment of disfranchisement and loss of civil rights.

The amendment to section 342 necessarily called for the reenactment of section 368 relating to embezzlement. The amendment makes no substantial change in the law.

Section 3 of the bill amends section 343 of the Penal Code. The change made by the amendment is only in respect to the punishment. Section 343 now provides that petit larceny is punishable as a misdemeanor, and section 16 of the Penal Code provides that except in cases where a different punishment is prescribed by law every offense declared to be a misdemeanor is punishable by imprisonment in jail of not exceeding 30 days or by a fine not exceeding \$25, or by both. The maximum punishment of a \$25 fine and 30 days in jail is not sufficient for the offense of petit larceny. While this punishment may be sufficient in a number of cases, there ought to be a much wider latitude allowed the court to impose a high punishment in cases of aggravated offenses. The amendment fixes the maximum punishment at one year imprisonment in jail or by a fine not to exceed \$500, or both such fine and imprisonment. The amendment is also needed in view of the fact that I have increased the value of property that must be taken in order to constitute grand larceny from \$25 to \$50.

Section 4 amends section 344 of the Penal Code by prescribing that punishment in cases of grand larceny shall be by imprisonment in the penitentiary for not less than one year nor more than 10 years. In other words, I am restoring the original text of the section before it was amended by the Executive order of August 14, 1908, by which the minimum punishment of one year was eliminated. Since the enactment of the Executive order of August 14, 1908, the courts of the Canal Zone in a number of instances have sentenced guilty parties to terms of three or four weeks in the penitentiary. I am of the opinion that if the guilty party is to suffer imprisonment in the penitentiary it should be for a period of not less than one year.

The proposed amendment to the law of grand and petty larceny will aid the due administration of justice here, and I hope that it will be adopted.

Section 5 provides for a new clause to section 461 of the Penal Code of the Canal Zone. The purpose of the amendment is to broaden the meaning of the term "person" as employed in the Penal Code. Under the present state of the law the term does not seem to be comprehensive enough to include the United States of America or any State, Territory, or possession of the United States of America, and any other political entity, foreign or domestic. With this amendment, the courts of the Canal Zone will have unquestioned power to protect the property of any Government when it is taken or used in a manner declared to be unlawful by the terms of the Penal Code.

The only change made by the amendment in paragraph 2 of the Executive order of July 9, 1914, establishing navigation rules for the Panama Canal, relates to the punishment. In all other respects the paragraph retains the language of the original enactment. The punishment is reduced by the amendment. The paragraph now provides that any violation of the navigation rules of the canal shall be punished by a fine not exceeding \$500, or by imprisonment in jail not exceeding six months, or by both such fine and imprisonment. Practically all of the violations of the navigation rules of the canal are of a petty nature, that ought to be disposed of in the magistrate court, but at the present time the offenses are beyond the jurisdiction of the magistrate court and come within the jurisdiction of the district court. The effect of the amendment will be to bring the cases within the jurisdiction of the inferior or magistrate courts of the Canal Zone, and in that way the Government will be relieved of expensive trials in the district court, and the cases can be disposed of with more dispatch in the inferior court.

I have gone over this bill with Mr. Hindman, the district attorney, and he agrees with me that the legislation is needed.

Respectfully,

FRANK FEUILLE, *Special Attorney.*

COMPARATIVE STATEMENT SHOWING IN PARALLEL COLUMNS PROVISIONS IN PENAL CODE AND NAVIGATION RULES NOW IN FORCE AND AS PROPOSED TO BE AMENDED BY DRAFT OF BILL SUBMITTED BY GOVERNOR.

PROVISIONS AT PRESENT IN FORCE.

Section 288, Penal Code:

SEC. 288. A person who engages in, instigates, aids, encourages, or does any act to further a contention or a fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, or who engages in a public or private sparring exhibition, with or without gloves, within the Canal Zone, who sends or published a challenge or acceptance of a challenge for such a contention, exhibition, or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition, or fight, shall be guilty of a felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars and be imprisoned in the penitentiary not less than one year nor more than three years.

Section 342, Penal Code:

SEC. 342. Grand larceny is larceny committed in either of the cases—

1. When the property taken is of the value of ten dollars and upward.
2. When the property is taken from the person of another.
3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, or jenny.
4. When the property taken is the property of the United States, Isthmian Canal Commission, or government of the Canal Zone.

Section 368, Penal Code:

SEC. 368. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt, or right of action, the sum due upon it or evidenced to be paid by it shall be taken at its value: *Provided*, That if the embezzlement or defalcation be of the property or public funds of the United States, Isthmian Canal Commission, or of the government of the Canal Zone, or of any municipality, city, or village of the Canal Zone, the offense is a felony, and shall be punishable by imprisonment in the penitentiary for not more than ten years; and the person so convicted shall be ineligible thereafter to any office or employment of honor, trust, or profit with the United States, Isthmian Canal Commission, or government of the Canal Zone.

PROVISIONS AS PROPOSED TO BE AMENDED.

Section 288, Penal Code:

SEC. 288. Whoever shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull or any other animal, for money or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned in the penitentiary not less than one year nor more than three years.

By the term "pugilistic encounter" as used in this section, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves between two or more men.

Section 342, Penal Code:

SEC. 342. Grand larceny is larceny committed in any of the following cases:

- (1) Where the property taken is of the value of fifty dollars or more.
- (2) When the property is taken from the person of another.
- (3) When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, or jenny.

Section 368, Penal Code:

SEC. 368. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or evidenced to be paid by it shall be taken as its true value.

Section 343, Penal Code:

SEC. 343. Larceny in other cases is petty larceny and is punishable as a misdemeanor.

Section 344, Penal Code:

SEC. 344. Grand larceny is punishable by imprisonment in the penitentiary not exceeding ten years.

Section 343, Penal Code:

SEC. 343. Larceny in other cases is petty larceny, and is punishable by imprisonment in jail for a term not to exceed one year, or by a fine not to exceed five hundred dollars, or both such fine and imprisonment.

Section 344, Penal Code:

SEC. 344. Grand larceny is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Section 461, Penal Code, paragraph No. 17 (new):

17. Whenever any property or interest is intended to be protected by a provision of this Penal Code and the general term "person" or any other general term is used to designate the party whose property it is intended to protect, the provision of such penal law and the protection thereby given shall extend to the property of the United States of America, or of any State, Territory, or possession of the United States, and any other political entity, foreign or domestic. This provision shall not be construed to restrict the meaning of the term "person" as defined under any other provision of this Penal Code.

Executive order, July 9, 1914:

2. Any person violating any of the provisions of the rules and regulations established hereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five hundred dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment, at the discretion of the court.

Executive order, July 9, 1914:

(2) Any person violating any of the provisions of the rules and regulations established hereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in jail not exceeding thirty days, or by both such fine and imprisonment, at the discretion of the court.

